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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/075,786
Filing Date: February 13, 2002
Appellant(s): HOLLAND ET AL.

C. Robert Rhodes
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 3, 2010 appealing from the Office action mailed August 4, 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

- a) On March 29, 2005, the BPAI affirmed the rejection of claims 1-13 and 27-40 in this application, 10/075,786, which was Appeal Number 2005-0288.
- b) On March 29, 2005, the BPAI affirmed the rejection of claims 1-27, of the parent application, 09/860,423, which was Appeal Number 2005-0117.
- c) On November 13, 2007, the BPAI affirmed a second time, the rejection of claims 1-13 and 27-40 in this application, 10/075,786, which was Appeal Number 2007-1962.
- d) On November 13, 2007, the BPAI affirmed the rejection of claims 1-27, of the parent application, 09/860,423, which was Appeal Number 2007-2262.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-3, 8-13, 27-29, and 34-39 are pending.

Claims 1-3, 8-13, 27-29, and 34-39 were finally rejected August 4, 2009.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,300,337	Andrieu	04-1994
5,395,682	Holland et al	03-1995
5,965,223	Andrews et al	10-1999
4,891,256	Kite, III et al	01-1990
5,070,597	Holt et al	12-1991

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

A) The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

a) Claims 1 & 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

b) Regarding claims 1 & 27, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

B) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

a) Claims 1-3, 8-9, 27-29, and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrieu (Pat Num 5,300,337) in view of Holland et al (Pat Num 5,395,682, herein referred to as Holland) and Andrews (Pat Num 5,965,223, herein referred to as Andrews). Andrieu discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments, such as airports, docks, and construction site, wherein the cover (Figs 1-4) may be moved back and forth abrasive surfaces and subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20). Specifically, with respect to claim 1, Andrieu discloses a protective cover (10) comprising a sleeve (Figs 1-2, Col 3, lines 55-59) capable of surrounding a cable or hose (abstract, Fig 4), wherein the sleeve has open ends (left and right ends) and including an elongated fabric sheet of a woven and single layer fabric (10) made of substantially high strength yarn (11, i.e. polyester, Col 3, lines 8-12), wherein the high strength yarn (11, i.e. polyester) is about 400 to 1000 denier (i.e. 600-2500, Col 3, lines 60-67), the fabric covering (10) has a warp and fill density of about 40 ends per inch (Col 4, lines 1-10), and wherein the sleeve is abrasion and moisture-resistant (Col 1, lines 12-20). With respect to claim 2, Andrieu discloses that the fabric (11) is formed from at least 70 percent high strength yarns (i.e. 100 % polyester). With respect to claim 8, Andrieu discloses that the sleeve (Fig 1) is formed as an elongated sheet having opposing longitudinal edges (top and bottom edges), wherein the opposed

longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4, lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 9, Andrieu discloses that the means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col 4, lines 35-47). With respect to claim 27, Andrieu discloses an abrasion resistant cable system (Fig 4) comprising a length of material such as a cable (not numbered) wherein the cover (Figs 1-4) may be moved back and forth abrasive surfaces and subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20), and wherein the protective sleeve (10) surrounds the cable, which is formed from a fabric made of substantially high performance yarn (i.e. polyester), wherein the sleeve has open ends (left and right ends) and formed of a woven and single layer fabric (10) made of substantially high strength yarn (11, i.e. polyester, Col 3, lines 8-12), wherein the high strength yarn (11, i.e. polyester) is about 400 to 1000 denier (i.e. 600-2500, Col 3, lines 60-67), the fabric covering (10) has a warp and fill density of about 40 ends per inch (Col 4, lines 1-10), and wherein the sleeve is abrasion and moisture-resistant (Col 1, lines 12-20). With respect to claim 28, Andrieu discloses that the fabric (11) is formed from at least 70 percent high strength yarns (i.e. 100 % polyester). With respect to claim 34, Andrieu discloses that the sleeve (Fig 1) is formed as an elongated sheet having opposing longitudinal edges (top and bottom edges), wherein the opposed longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4, lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 35, Andrieu discloses that the

means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col 4, lines 35-47).

However, Andrieu doesn't necessarily disclose the protective sleeve being made of a yarns formed of primarily of long chain polyethylene fibers having a tensile modulus equal to or greater than 150g/denier and a tenacity equal to or greater than 7 grams/denier, the fabric density of between about 30 and 36 inches per inch, wherein the sleeve is lightweight, and wherein the yarns themselves are resistant to deterioration from chemicals, fuels, oil, cut and tear resistant, wherein the yarns are resistant to heat build up (claims 1 & 27), nor the yarns being 70% long chain polyethylene (claims 2 & 28), nor the protective cover being made of a material fabric having a weight of between of between about 5 & 8 ounces per square yard (claims 3 & 29).

Holland teaches a protective cover, that is made of Spectra® fibers (Col 2, lines 28-37), that overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment (Col 1, lines 5-10). Specifically, with respect to claims 1 & 27, Holland teaches that the protective cover is made of high performance yarns, such as Spectra® fibers that inherently has a tensile modulus equal to or greater than 150g/denier and a tenacity equal to or greater than 7 grams/denier, wherein the fabric formed of Spectra® fibers are cut, tear, fuel, chemical, and oil resistance to petroleum-based products (Col 4, lines 45-51), wherein the sleeve is lightweight, and wherein the yarns themselves are resistant to deterioration from

chemicals, fuels, oil, cut and tear resistant, wherein the yarns are resistant to heat build up (Col 4, lines 45-51). With respect to claims 2 & 28, Holland teaches that the fabric containing 100% Spectra® fibers are 100% long chain extended polyethylene (Col 2, lines 25-30). With respect to claims 3 & 29, Holland teaches that the fabric may be constructed to have a warp and fill density of between 30 and 36 ends per inch (Col 2, lines 49-51).

With respect to claims 1-3 and 27-29, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the protective cover, which is made of polyester fibers, of Andrieu to comprise the Spectra® fibers and the fabric parameters of the protective fabric as taught by Holland because Holland teaches that such a fabric by made of commercially available Spectra® fibers and having the specified parameters, overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment in which the cover is used (Col 1, lines 5-10) and since it has been held to be within general skill of a worker in the art to select a commercially available or known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Modified Andrieu also doesn't necessarily disclose the protective cover consisting of yarns having a thermoplastic film selected from the group of polyethylene and ethylene vinyl acetate film bonded to at the one side or surface thereof (claims 1 & 27).

Andrews teaches a composite protective cover, that is cut and abrasion resistant (Col 2-3, lines 40-43 & 22-24 respectively), and may be utilized as a tube of jacketing material for tubing, hoses, and electrical wires (Col 2, lines 38-40), has minimal weight, provides greater tactile sensitivity, improved comfort, and enhanced freedom of motion (Col 4, lines 53-57). Specifically, with respect to claims 1, 6, 27, and 32, Andrew teaches that the composite protective cover comprising an inner layer (23) bonded to an second layer (25, Col 6, lines 45-52), wherein the second layer (25) provides a barrier to contaminants and moisture (Col 3, lines 47-59), wherein the inner layer (23) may be made of high performance yarns, such as Spectra® ultra high molecular weight extended chain polyethylene (Col 4, lines 15-19) and an outer layer (25) that may be polyethylene (PE) or ethylene vinyl acetate (EVA, Col 3, lines 55-59), and wherein the layers (23 & 25) are bonded to form a single protective cover consisting of yarns having a thermoplastic film selected from the group of polyethylene and ethylene vinyl acetate film bonded to at the one side or surface thereof (Col 3, lines 45-55).

With respect to claims 1 & 27, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the protective cover, which is made of inner layer of Spectra® fibers of modified Andrieu to comprise the composite fabric of Spectra® fibers and PE or EVA, as taught by Andrew because Andrew teaches that such a fabric by made of commercially available Spectra® fibers that are cut and abrasion resistant (Col 2-3, lines 40-43 & 22-24 respectively), and may be utilized as a tube of jacketing material for tubing, hoses, and electrical wires (Col 2, lines 38-40), has minimal weight, provides greater tactile sensitivity, improved comfort,

and enhanced freedom of motion (Col 4, lines 53-57), and that adding a second inner layer to the Spectra® fibers, provides the protective cover with barrier to contaminants and moisture (Col 3, lines 47-59), and since it has been held to be within general skill of a worker in the art to select a commercially available or known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

b) Claims 10-12 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrieu (Pat Num 5,300,337) in view of Holland (Pat Num 5,395,682) and Andrews (Pat Num 5,965,223), herein referred to as modified Andrieu, as applied to claims 1 and 27 above, further in view of Kite, III et al (Pat Num 4,891,256, herein referred to as Kite). Modified Andrieu discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments wherein the cover (Figs 1-4) may be subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20) as described above. Specifically, with respect to claim 10, modified Andrieu discloses a protective cover (10) comprising a sleeve (Figs 1-2, Col 3, lines 55-59) capable of surrounding a cable or hose (abstract, Fig 4). With respect to claim 11, modified Andrieu discloses that the sleeve (Fig 1) is formed having opposing longitudinal edges (top and bottom edges), wherein the opposed longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4, lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 12, modified Andrieu discloses that the means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col

4, lines 35-47). With respect to claim 36, modified Andrieu discloses a protective cover (10) comprising a sleeve (Figs 1-2, Col 3, lines 55-59) capable of surrounding a cable or hose (abstract, Fig 4). With respect to claim 37, modified Andrieu discloses that the sleeve (Fig 1) is formed having opposing longitudinal edges (top and bottom edges), wherein the opposed longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4, lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 38, modified Andrieu discloses that the means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col 4, lines 35-47).

However, modified Andrieu doesn't necessarily disclose the sleeve being a plurality of bands comprising a short length of the fabric and being spaced apart along the length of the cable or hose (claims 10 & 36), nor each band having opposed longitudinally edges including means for fastening the opposed longitudinally edges together around the length of the cable (claims 11 & 37).

Kite teaches a wraparound closure device (Figs 1-4) made of a fabric that protects elongated substrates, such as cables, from abrasion (Col 1, lines 5-10). Specifically, with respect to claims 10 & 36, Kite teaches a wraparound sleeve (10-Fig 3) that may be made of polyester (Col 4, line 49-50) and is formed as a plurality of bands (see three fabric sleeves not numbered) wherein each band comprises a short length of the fabric which are spaced apart along the length of the cable (Fig 3) for the purpose of providing effective bundling device that accommodates multiple cable break-outs (Col 1, lines 38-45). With respect to claims 11 & 37, Kite teaches that each short

length of fabric (see 3 section of fabric, Fig 3) having opposed longitudinally edges (left and right sides of all three fabrics) wherein the opposed longitudinally edges has means (24, 30, & 32) for fastening the opposed longitudinally edges together around a length of the cable (Fig 3).

With respect to claims 10-11 & 36-37, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the polyester protective cover of modified Andrieu to comprise a multiple protective covers as taught by the Kite because Kite teaches that such a fabric configuration protects elongated articles from abrasion (Col 4, lines 5-8) and provides effective bundling device that accommodates multiple cable break-outs (Col 1, lines 38-45) and since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. (*St. Regis Paper Co v. Bemis Co.*, 193 USPQ 8).

c) Claims 13 & 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Andrieu (Pat Num 5,300,337) in view of Holland (Pat Num 5,395,682) and Andrews (Pat Num 5,965,223), herein referred to as modified Andrieu, as applied to claims 1 and 27 above, further in view of Holt et al (Pat Num 5,070,597, herein referred to as Holt). Modified Andrieu discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments wherein the cover (Figs 1-4) may be subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20) as detailed above with reference to claims 1 & 27.

However, modified Andrieu doesn't necessarily disclose the protective cover further comprising a hood made of the same fabric and fastened to at least one end of the sleeve for protecting the exposed end of the cable or hose (claims 13 & 39).

Holt teaches a double wall protective cover (Figs 1-19b) comprising flame retardant, abrasion resistance, and split or tear resistance (Col 18, lines 21-26), for the purpose of providing environmental protection, including electrical protection, and joining or mechanical holding of substrates such as cables or pipes (Col 1, lines 17-21). Specifically, with respect to claims 13 & 39, Holt discloses that the protective cover (Figs 1-19b) may be formed of polyester (Col 7, line 36) and as a hood (i.e. end cap, 19, Figs 6a-d), wherein the hood (19) may be fastened to at least one end of the cable or pipe (22) for protecting the exposed end of the cable or pipe (22, Col 29, lines 23-24).

With respect to claims 13 & 39, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the cable or pipe assembly of modified Andrieu to comprise a end cap protective cover formed of fabric as taught by the Holt because Holt teaches that fabrics, having excellent flame retardant, abrasion resistance, and split or tear resistance (Col 18, lines 21-26), are commonly used to protect cables and pipes are sometimes formed as end cap cover configuration that provides environmental protection, including electrical protection for the joining or mechanical holding of substrates such as cables or pipes (Col 1, lines 17-21) and also provides protection for the exposed ends of cables or pipes (Col 29, lines 23-24).

(10) Response to Argument

1. Applicant's arguments filed April 30, 2009 have been fully considered but they are not persuasive. Specifically, the applicant argues the following:

- A) Andrieu doesn't disclose or suggest several limitations of the claims such as the "lengths of the material being moved back and forth across abrasive surfaces and subject to abrasion, chemicals, moisture, and weather extremes", "the sleeve being formed of high performance high tensile strength yarns comprising 150grams/denier, high tenacity (7grams/denier), or high density polyethylene, nor the warp and fill density being 30-36 ends/inch" and "the sleeve consisting of a woven lightweight fabric with a thermoplastic film selected from the group consisting of polyethylene and ethylene vinyl acetate bonded to at least one side thereof.
- B) Holland doesn't teach or suggest the use of yarns with a thermoplastic film nor does Holland recognize that such would provide a superior cable or hose cover which would hold up even when dragged repeatedly and continuously across an abrasive surface.
- C) Andrews doesn't teach or suggest a woven fabric with a thermoplastic film bonded to at least one side thereof and being formed of EVA or PE but rather teaches a multi-layer knitted composite fabric that is a single layer of one or more yarns plated together as required by claims 1 & 27.

- D) The combination of Andrieu with the other secondary references has been made as a result of hindsight and not as a result of predictable combination and don't teach all of the claimed limitations as claimed in claims 1 & 27.
- E) The examiner is piecing together references without any explanation and therefore the combination of Andrieu with Holt is improper as there would be no need to protect the ends of such cables because the end would likely seriously interfere with the operation of the connected cable.
- F) A proper prima facie case of obviousness has not been shown and therefore the combination of Andrieu, Holland, and further with Andrews is improper.
- G) Andrieu teaches against utilizing the material of Holland because Andrieu specifically states that the cover is to be inexpensive and modifying the cover of Andrieu with the material of Holland would defeat the objectives of Andrieu and therefore the combination would destroy the purpose of Andrieu.
- H) The rejection of claims 1 & 27 under 35 USC 112, 2nd paragraph, is improper and therefore should be withdrawn.

With respect to arguments A-B and D-G, the examiner respectfully traverses. Firstly, the examiner would like to state that it is improper for the applicant to attack individual references when the rejection is based on the combined teachings of both references. Specifically, the courts have been consistent that one cannot show

nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Secondly, the examiner recognizes that in order to establish a proper prima facie case of obviousness, three criteria must be met. Specifically, MPEP states the following:

ESTABLISHING A PRIMA FACIE CASE OF OBVIOUSNESS

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

Andrieu clearly recognizes the problem of wires and cables needing abrasion and weather protection as claimed. Specifically, Andrieu clearly discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments wherein the cover (Figs 1-4), may be subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20). While it has been admitted on the record that Andrieu doesn't necessary disclose the material being cut resistant or tear resistant, or being expensive, nor the protective cover being made of yarns having a thermoplastic

film selected from the group of polyethylene and ethylene vinyl acetate film bonded to at the outer surface there, the courts have long held that the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). In this case, Holland clearly teaches a protective cover, that is made of Spectra® fibers (Col 2, lines 28-37), that overcomes the disadvantages of prior art polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment (Col 1, lines 5-10). The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Andrieu clearly teaches a protective cover for cables that may be made of polyester for protecting against weather elements (i.e. heat) and that is abrasion resistant as explained above. Holland clearly teaches a protective cover that is that is made of Spectra® fibers (Col 2, lines 28-37), that overcomes the disadvantages of prior art polyester fabric covers (Col 2, lines 16-23), such as the cover of Andrieu, and also has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment (Col 1, lines 5-10). Andrews teaches a

composite protective cover, that is cut and abrasion resistant (Col 2-3, lines 40-43 & 22-24 respectively), and may be utilized as a tube of jacketing material for tubing, hoses, and electrical wires (Col 2, lines 38-40), has minimal weight, provides greater tactile sensitivity, improved comfort, and enhanced freedom of motion (Col 4, lines 53-57), wherein the composite protective cover comprising an inner layer (23) bonded to an second layer (25, Col 6, lines 45-52), wherein the second layer (25) provides a barrier to contaminants and moisture (Col 3, lines 47-59). Clearly, Andrieu and Holland are concerned with the protective covers providing abrasion and weather resistant as disclose above in the rejection. While Holland, states that the protective cover may be used with cargo container, Holland clearly teaches that the protective cover can also be utilized in other applications, where the protection of interior components by a cover having the properties of abrasion and weather resistance is needed (see Col 3, lines 18-24). Clearly as taught by Holland, a protective cover made of Spectra fibers not only fulfils the stated purposes of Andrieu (i.e. abrasion and weather resistant) but also teaches why such a protective cover is more superior that protective covers made of polyester materials, such as the protective cover of Andrieu. Therefore, there clearly does exist a motivation to modify the polyester protective cover of Andrieu to comprise the Spectra® fibers and the fabric parameters of the protective fabric as taught by Holland because Holland teaches that such a fabric by made of commercially available Spectra® fibers and having the specified parameters, overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), such as the polyester protective cover of Andrieu, and has minimal weight, increased abrasion resistance, tear strength, cut and

stab resistance, and is compatible with the environment in which the cover is used (Col 1, lines 5-10).

Andrews also teaches a composite protective cover, that is cut and abrasion resistant (Col 2-3, lines 40-43 & 22-24 respectively), and may be utilized as a tube of jacketing material for tubing, hoses, and electrical wires (Col 2, lines 38-40), has minimal weight, provides greater tactile sensitivity, improved comfort, and enhanced freedom of motion (Col 4, lines 53-57), wherein the composite protective cover comprising an inner layer (13) bonded to an outer layer (11, Col 5, lines 45-52), wherein the inner layer (13) may be made of high performance yarns, such as Spectra® ultra high molecular weight extended chain polyethylene (Col 4, lines 15-19) and an outer layer (11) that may be polyethylene (PE) or ethylene vinyl acetate (EVA, Col 3, lines 55-59) that inherently has a tensile modulus equal to or greater than 150g/denier and a tenacity equal to or greater than 7 grams/denier(i.e. the applicant has disclosed that Spectra® ultra high molecular weight extended chain polyethylene is a material having such characteristics). While Andrews discloses that the protective cover is utilized in apparel such as gloves, Andrews also states that the composite fabric may be utilized as a tubular articles such as jacketing for tubing, hoses, and electrical wiring (Col 2, lines 38-40). Clearly as taught by Andrew, a protective cover made of laminated Spectra, that is cut and abrasion resistant (Col 2-3, lines 40-43 & 22-24 respectively), and may be utilized as a tube of jacketing material for tubing, hoses, and electrical wires (Col 2, lines 38-40), has minimal weight, provides greater tactile sensitivity, improved comfort, and enhanced freedom of motion (Col 4, lines 53-57), wherein the protective

cover comprising an inner layer (23) bonded to an second layer (25, Col 6, lines 45-52), wherein the second layer (25) provides a barrier to contaminants and moisture (Col 3, lines 47-59), wherein the inner layer (23) may be made of high performance yarns, such as Spectra® ultra high molecular weight extended chain polyethylene (Col 4, lines 15-19) and an outer layer (25) that may be polyethylene (PE) or ethylene vinyl acetate (EVA, Col 3, lines 55-59) is clearly in line with the objectives of Andrieu (i.e. abrasion and weather resistant). Therefore, there clearly exist a motivation to modify the protective cover, which is made of inner layer of Spectra® fibers of modified Andrieu to comprise the composite fabric of Spectra® fibers and PE or EVA, as taught by Andrew because Andrew teaches that such a fabric by made of commercially available Spectra® fibers that are cut and abrasion resistant (Col 2-3, lines 40-43 & 22-24 respectively), and may be utilized as a tube of jacketing material for tubing, hoses, and electrical wires (Col 2, lines 38-40), has minimal weight, provides greater tactile sensitivity, improved comfort, and enhanced freedom of motion (Col 4, lines 53-57), and that adding a second inner layer to the Spectra® fibers, provides the protective cover with barrier to contaminants and moisture (Col 3, lines 47-59), and since it has been held to be within general skill of a worker in the art to select a commercially available or known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Based on the teachings of Holland & Andrew, it has also been held that to be within general skill of a worker in the art to select a commercially available or known material on the basis of its suitability for the intended use as a matter of obvious design

choice. In re Leshin, 125 USPQ 416. Secondly, there clearly exists a reasonable expectation of success, since both Holland, Andrew, and Andrieu all teach protective covers that may be utilized with hoses or electrical cables thereby providing the same properties, such as abrasion and weather protection. Thirdly, the combination of Andrieu and Holland discloses all of the claimed invention. Therefore, all three basic criteria for establishing a prima facie case of obviousness have been met.

With regard to argument C, the examiner respectfully traverses. While Andrews clearly teaches the yarns being knitted together, Andrews clearly teaches that the materials may be combined by other methods such as coating and coextruding. Clearly, when such processes are utilized, there would be two distinct layers formed as claimed by the applicant. This is supported throughout the specification with Andrews stating cut resistant layer is interior to the abrasive layer (see abstract and throughout the specification). The applicant makes the argument that the process forms a single layer, however, the applicant's sleeve is made by the same process. Specifically, the applicant states on Page 3, lines 15-19,

15 While not required for abrasion-resistance, a lightweight coating or lamination is provided on the outer surface of the protective cover to enhance the penetration resistance of the fabric by fluids, chemicals, and particulate matter where such additional protection is desired. It has been found that a thermoplastic film of polyethylene or ethylene vinyl acetate suitably bonds to fabrics formed from high-strength yarns, including SPEC[™]TRA®.

The applicant also states in the specification page 5, lines 9-13, the claimed invention may also be sewn or woven. Specifically, the specification states:

having an outer surface 12, an inner surface 14, and open ends 15, 17. Protective cover 10 is formed from a singular length of woven fabric with a single layer that is sewn together along longitudinal edges to form a seam 16.

Lastly, the applicant also states the outer layer may also be impregnated into the outer surface of the inner layer, hence also forming a single layer. Specifically, the specification states on page 8, lines 4-10,

are of cable 60 is thus covered with the abrasion-resistant material. Outer layer 66 may be cemented or glued with commercial-grade adhesives known in the art. Alternatively, outer layer 66 may be pressed or impregnated into the outer surface of layer 64 using techniques well known to those in the art. Similarly, fuel hose 70 shown in Figure 5b is formed from a

Therefore, while it has been office policy that the method of making the product doesn't add any additional structure because it has been held that the presence of process limitations in product claims, in which the product doesn't otherwise patentably distinguish over the prior art, cannot impart patentability to that product, clearly, the same processes and materials as described by the applicant are also taught by the Andrews prior art and therefore would exhibit the same characteristics as the claimed invention. Therefore, it is respectfully submitted that the Andrews reference clearly teaches a woven fabric with a thermoplastic film bonded to at least one side thereof and being formed of EVA or PE as required by claims 1 & 27.

With respect to argument H, the examiner respectfully traverses. The 35 USC 112, second paragraph rejection is proper because it is unclear whether the claim limitations, following the phrase "or the like" are included and therefore the actual metes and bounds of the claim cannot be determined.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/William H. Mayo III/

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